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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,743	01/23/2002	Paul Miller	S63.2-9964	7373

490 7590 12/10/2003

VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER

NOLAN, SANDRA M

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 12/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,743

Applicant(s)

MILLER ET AL

Examiner

Sandra M. Nolan

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2003 and 12 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 23-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claims

1. Pursuant to entry of the amendment dated 12 September 2003 (Paper No. 7), claims 1-13 and 23-25 are pending.

Objection/Rejection Withdrawn

2. The objection to claim 17 has been withdrawn in view of the amendment thereto in Paper No. 7.
3. The 35 USC 112 rejection of claims 4, 5, 12, and 19, as set forth in section 11 of the office action dated 26 August 2003 (Paper No. 4), is withdrawn in view of applicants' amendments to the claims and the remarks on page 5 of Paper No. 7.

Rejection Maintained

4. The 35 USC 102 rejection of claims 1, 2, 4, 5 and 8-12 as anticipated by Samuelson et al (US 6,165,166), as set out in section 13 of Paper No. 4, is maintained for reasons of record.
5. The 35 USC 103 rejection of claims 6 and 7 as unpatentable over Samuelson, as stated in section 16 of Paper No. 4, is maintained for reasons of record.
6. The 35 USC 103 rejection of claims 3, 13 and 23-25 as unpatentable over Samuelson in view of Graham et al (US 4,602,058), as recited in section 17 of Paper No. 4, is maintained for reasons of record.

Response to Arguments

7. Applicant's arguments filed in Paper No. 7 have been fully considered but they are not persuasive. The arguments presented there will be responded to in the order in which they were presented.

On page 6, applicants argue that Samuelson does not anticipate the claims because it does not teach a tie layer that is applied via powder coating and that the interfacial properties of the claimed tie layer will differ from those of an extruded layer because it is applied via powder coating.

However, in the absence of convincing objective evidence to the contrary, a layer produced via powder coating is the same as one made via extrusion, so that Samuelson's finished product is the same as applicants'. The examiner notes that applicants are arguing that the interfacial properties of the tie layer will differ because it is applied via powder coating. However, arguments are not sufficient when, as here, objective evidence is called for. See MPEP 2145(I).

While a section 102 rejection requires that "every element" of a claim be present in the reference, the requirement is satisfied when a structure that would result from the process recited in the claim is present in the reference. Here the powder coated tie layer is the same polymer layer regardless of how it is applied.

On page 6, applicants argue that the section 103 rejection of claims 6 and 7 is improper because the section 102 rejection of claim 1—from which claims 6 and 7 depend—is improper.

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However, as is explained above, the section 102 rejection is proper in the absence of convincing objective evidence to the contrary. Therefore, the section 103 rejection is also proper.

On page 7, applicants argue that the section 103 rejection of claims 3, 13 and 23-25 is improper because the section 102 rejection of claim 1 is improper.

However, the section 102 rejection is deemed proper in the absence of convincing objective evidence to the contrary. Therefore, the section 103 rejection is also proper.

Final Rejection

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Conclusion

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/872-9306. The receptionist answers 703/308-0661.



S. M. Nolan
Patent Examiner
Technology Center 1700

SMN/smn
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08 December 2003